

Affidavit of Fact

STATE OF TEXAS

COUNTY OF Taylor

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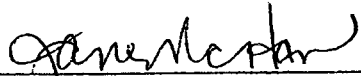
BEFORE ME, the undersigned authority, on this day personally appeared Jane McHan, who being by me duly sworn, did depose and state upon oath as follows:

1. My name is Jane McHan. I am over twenty-one years of age and am fully competent to make this affidavit.
2. Except where stated that I have been told by someone else, I have personal knowledge of all the facts set forth herein, and all such facts are true and correct.
3. I am a licensed master social worker with over twenty years' experience in working with individuals with medical, psychological and social problems.
4. I was court appointed in federal habeas as a mitigation specialist on behalf of John Balentine. In the course of my investigation, I have done preliminary interviews. Attached are my reports that summarized the information I learned from Clara Smith (Exhibit A), Eric Smith (Exhibit B), Angelina Watson (Exhibit C), and Lynn Rowe (Exhibit D). These reports are true and correct and were made by me in the course and scope of my investigation in the Balentine matter.
5. As aforementioned, these reports are based on preliminary interviews of only a few of the extensive family members of Mr. Balentine. It has been my experience that in order to fully develop a social history, it is necessary to have several interviews with a witness in order to complete the interview process and obtain a complete picture of what the client's life has been like.
6. Nonetheless, even based on the limited information revealed to date, there are several mitigation themes that appear, as for example:
 - a. a history of potential mental illness: Eric Smith related several strange behaviors of John saying John would eat a whole bag of sugar, he ran through a door for no reason, completely broke through it, although no one was chasing him; his mom was scared John would flip out or something and took John to the mental health clinic in Newport, and thereafter, John was sent off for a month.

- b. a history of domestic abuse and addiction: Clara Smith, John's mother related that John's father, James Henry Balentine, would start drinking on the weekends and that James would slap her in the face, gave her black eyes on many occasions and had a "real hot temper." John witnessed these assaults on his mother.
- c. absence of adult supervision: Eric Smith relates that their mother was not home much because she was working so much and the kids had to fend for themselves a lot.
- d. extreme poverty: Eric Smith relates that his mother would not take welfare; there were seven kids who lived in a three bedroom house; they did not always have enough to eat, but they always had something even if it was just cereal.
- e. absence of a father figure or any positive male role model: Clara Smith relates how James Balentine modeled alcoholism and domestic violence, and died in a car accident. Her subsequent marriage to George Henry Tyson, who went by the last name of Smith, provided no better a role model. Clara relates how she found out "all kinds of things" about Smith, including how he might have shot a preacher before she knew him.
- f. corruptive environment: Angelina Watson relates that she never knew John to be around "positive people" very much and had been "exposed to the wrong environment for so long."
- g. slow learners: Although Clara Smith relates that several of her children were "lazy" there is a recurring themes among several of the children that suggests they were learning disabled, including John who was placed in special education. Eric relates that when he asked to be placed in special education the school refused thinking he "wanted to get out of work" and that his mother "would not push the issue" because she was "non-confrontational." Almost all of the kids did not finish high school.
- h. possible post traumatic stress disorder: There appears to be a pattern that shows that John either witnessed domestic violence, or was himself physically assaulted over the course of his life, starting as a young child. Eric relates that John told him that the people in the "mental thing" whipped him "all the time with a paddle or a belt," that John was "abused a lot when he was in jail at 17," describing John as having knots on his head like "cartoon knots, like skin peeling back and the knot coming through," and the threats by the victims prior to their death that they wanted to kill John.

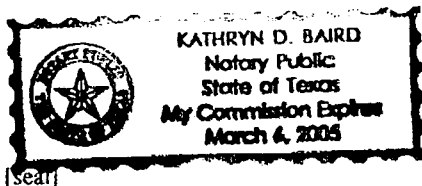
7. I have only scratched the surface, but the combination of poverty, chaotic family life, poor adult example, abuse/neglect, alcohol abuse by dad, and school issues lead me to believe that there is plenty of mitigation evidence in this case, and it was there to be found, if defense counsel had mounted an adequate mitigation investigation.
8. Various family members consistently reported to me that they were not contacted by the defense attorneys or any agent acting on their behalf. At least one family member told me he had made attempts to contact the defense attorneys, who did not contact him back.


FURTHER AFFIANT SAYETH NOT.


Jane McHan, LCSW
Mitigation Services
5249 U.S. Hwy, 277 S., #110
Abilene, TX 79605
(325) 691-5331

Before me, a Notary Public, on this day personally appeared Jane McHan, known to me (or proved to me on the oath of JANE MCHAN or through (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 21 day of NOVEMBER,
(year). 2003




Notary Public

Jane McHan, LCSW
Mitigation Services
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Phone Interview with Clara Smith
October 27, 2003
1:35 PM to 2:41 PM

Name: Clara Mae Rowe Balentine Smith
DOB: 8-6-49
Address: 918 Remmel St.
Newport, AR 72112
Phone: (870) 217-0587
Employment status: Disabled, formerly worked as a nurse's aide for 37 years
Relationship: John Balentine's mother

Clara Mae Rowe was born on 8-6-49 to Leopher Simmons and Izell Rowe in Augusta, AR. Her parents are both now deceased. Mr. Rowe died of a stroke at age 49, around 1979. He was also reportedly an alcoholic. Ms. Simmons died in childbirth in 1960, cause uncertain.

Clara is the oldest of eight children. Her siblings are:

Bessie Mae Rowe
Ora Lee Rowe
Johnny B. Rowe
Gloria B. Rowe
Mary Ann Rowe
Gladystine Rowe
Carol Lee Rowe

According to Ms. Smith, all are still living and in relatively good health.

Ms. Smith grew up in Newport, AR. She attended local schools until the 9th grade, when she dropped out due to pregnancy. She did obtain her GED in 1970.

She married James Henry Balentine on 2-25-65. His DOB was 9-14-34. She described her husband as "having a real hot temper." She stated that he "had been in a lot of trouble himself" before she knew him. He was abusive toward her, hit her, gave her black eyes on many occasions, pushed her down, slapped her in the face. She stated that

Exhibit

A

this happened about once a week. usually on the weekends when he would start drinking. She stated that he did not drink during the week, but drank "a lot" on the weekends, mostly whiskey or wine.

Ms. Smith claimed that Mr. Balentine was never abusive toward the children, that he "was crazy about the kids." but that they did witness his abusive behavior toward her on many occasions. She stated that they did not try to help her because they were probably afraid of him. She and Mr. Balentine remained together until he died in a car accident in December of 1971. She was with him in the car and thinks that he fell asleep at the wheel. She was hospitalized for about a week. She stated that, at first, it was suspected that her back was broken, but it was not.

Ms. Smith's children:

Lynn Ray Rowe (male); DOB 3-15-64

326 Border St.

Newport, AR 72112

(870) 523-5419

Lives with his girlfriend Necie (spelling uncertain), not sure of her last name

No children

Lynn works at Curtner Lumber Co.

He was considered a "slow learner" and went to a special rehabilitation school in Hot Springs

According to his mother, he has never had legal troubles.

Doris Helen Balentine Cash, DOB 10-17-66 (also known as Ann)

Address unknown, Houston, TX area

(281) 920-0877

Graduated from high school in Newport

Attended some college in Russellville, AR but didn't finish

Works for a restaurant

Husband Ron Cash

Doris has three children from a previous marriage, Bruce, Erica, and Antoinette

Freddie James Balentine, DOB 4-20-70

Lives with Doris, same contact info

Quit school in 11th grade, was having trouble with school but mother not sure exactly what kind of trouble, thinks he was "lazy"

Served the last three years in prison for beating up his girlfriend

May have obtained his GED in prison

Has one daughter in Amarillo, Ms. Smith has no info about her

Rosie Joann Balentine, DOB 5-16-71

Lives in the Houston area

(866) 750-4275

Graduated from high school in Newport

Was a sickly child. her legs hurt all the time, was later diagnosed with lupus after she moved to Texas as an adult, now trying to get disability.

Has previously worked in a nursing home and in restaurants

Lives with her boyfriend. Kevin, last name unknown; he works at Chili's

Has a daughter, Carlisa Pittman, almost 14

Eric Ontario Smith, DOB 11-5-75

Lives in Amarillo, Texas

(806) 236-6856

Dropped out of high school in Newport in 11th grade, "lazy and didn't like school"

Got his GED about two years ago

Wife, Lisa

Son, Coby, almost 2 years old

Lisa has a beauty shop, not sure if Eric works

He hasn't been in trouble that she knows of

Patrick Tyrone Smith, DOB 8-15-84

Lives with Clara Smith in Newport

Graduated from high school in 2003

Working for Maytag, assembling washers and dryers

No learning problems, no legal problems, no emotional problems

After James Balentine died, Clara married George Henry Tyson on 5-20-80. She stated that he was using the name "Smith" at the time, so that is why her name is Smith. She later found out that his real name was Tyson. She stated that she later found out "all kinds of things" about him, for example, that he might have shot a preacher before she knew him. John Balentine did not like him at all. One day she came home from work and they were having a fist fight. John was about 16. She divorced George Tyson in 1992. He is the father of Eric and Patrick. He loves his kids and still sees them. George is on disability because of a work related accident. She stated that he was working for the Highway Dept. and got into a disagreement with them about job issues. He threatened to use the NAACP against them and they "rolled a bunch of pipes in front of him" while he was working out on the road. He was injured by the pipes and hasn't been able to work. She feels that it was done on purpose.

Ms. Smith worked at Regional Health Care Nursing Home as a nurse's aide for 37 years. She had a heart attack two years ago and is now on Social Security Disability. She stated that she has had no other health issues.

She related John's history as follows:

He was born on 1-31-69 after a full term, uncomplicated pregnancy. She had no complications with labor or delivery. He was born at Newport Hospital and weighed 8 lbs., 6 oz. He was 19 inches long. He had a "big head" according to his mother, but "looked fine" and did not have any medical complications at birth. Mother and baby came home in the typical time frame; neither needed additional treatment or observation. He was healthy as a baby. She did not note any abnormalities with his developmental milestones, except that he did not talk well until he was about five years old. She did not feel that he was delayed in any other area. When the children were small, they stayed with Ms. Smith's grandmother, Albertha Rowe. Later, the older children looked after the younger ones while their parents were working.

John reportedly did well in school until high school. He then began to "get into it with his teachers," arguing and causing trouble. Ms. Smith feels that he is "real smart," but didn't like school. He was never in Special Education. He quit school in the 11th grade. He "laid around the house and never tried to work."

His first trouble with the law was at about age 15. He and brother Freddie stole a motorcycle. The police just told her to take them home.

He may have been on probation at one time.

He did see a counselor at the Newport Mental Health Clinic for about six months when he was in high school. He was referred there by someone in the Police Dept. Ms. Smith does not remember the name of the counselor. She took him every Tuesday for about six months. She is not sure if a diagnosis was given or what it was. He was not on any medication.

John had a temper. He would hit his younger brothers. He was never abusive toward his mother. She stated that he was the most helpful of her kids. He would help her around the house, keep her car running. He "had a nice personality." He attended church at Blacksville Baptist Church in Newport. The preacher, Rev. Barnes, might be willing to speak positively about him. Ms. Smith will get us a phone number.

John did do some work for a man named C.L. Borders, working on people's houses. He might also be willing to speak for him. His address is 1117 Walnut St., Newport, 72112 Phone (870) 523-2597. (I noticed in records there is already a statement from Mr. Borders, but it might not hurt to follow up).

At age 17, he broke into the Walmart and stole quite a bit of goods. He ended up going to jail and then prison. He never liked drugs or anyone who used them. Ms. Smith is not sure of any alcohol history for John.

Ms. Smith stated that she has never been contacted by anyone else in John's case. She stated, "this is the first time anyone has called." She is willing to sign an affidavit if needed.

Jane McHan, LCSW
Social Worker/Mitigation Specialist

Jane McHan, LCSW
Mitigation Services
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(325) 691-5331

Telephone Interview with Eric Smith
November 6, 2003
1:53 PM to 2:41 PM

Name: Eric Ontario Smith
DOB: 11-5-76
Address: 1406 Harrison
Amarillo, Texas 79107
Phone: (806) 236-6856
Relationship: John Balentine's half-brother

Eric moved to Amarillo in 1995. He had been to visit his brother, Freddie, and liked it, so decided to move back. He has been married to Lisa Smith since 7-23-00. They have a son, Kobe Smith, DOB 5-16-01. Lisa's two children, Brianna Taylor, age 12 and Devonte Taylor, age 11, also live with them. The Smiths own a beauty shop, which Lisa runs, called Salon X Quisite, phone number (806) 373-8808. Eric works for Rucker Steam Cleaning, phone number (806) 373-1111 or 383-1111. The steam cleaning company is owned by Theory Rucker, who is also a cousin of John's on his father's side. Eric thought that Theory would be willing to help if contacted. Eric is attending Amarillo College to work on a masonry and framing technical degree.

Eric also has three other children who do not live with him at this time:

Eric Smith, Jr., DOB 11-11-96 and Letron Smith, DOB 8-8-97, who live in Amarillo with their mother, Devonda Patterson. Eric maintains contact with them and sees them regularly.

Katara Bell, DOB 3-22-98, who lives in Houston with her mother, Ynette Bell. Eric has not seen her in about a year, but sends money to his sisters who make sure that she is taken care of.

Eric stated that he was fairly young while John still lived at home but that they "grew up some together." He stated that John "could fix anything." He didn't get mad about much. He did get in trouble for little things, like stealing a bag of chips or something, "being young in the ghetto." The family did not have a lot of money. Their mother worked four jobs as long as Eric could remember. She cleaned three people's houses and then worked the 3-11 shift at a nursing home. She was not at home much. She went into a lot of credit card debt just trying to keep all the kids in school clothes.

Exhibit **B**

He stated that the kids had to fend for themselves a lot, but they didn't blame their mom because she was working so hard to take care of them. She didn't believe in going on welfare. All the boys "fought each other all the time." He thought this was because they were all together "in that little house." It was three bedrooms, but there were seven kids. All the boys shared a room. Maybe they did not always have enough to eat, but they always had something, even if it was just cereal. "A lot of kids had to go on welfare but Mama wouldn't take it."

He remembers John having some strange behaviors. For example, he would eat a whole bag of sugar. No one knew why. Their mom had to hide the sugar. He also "ran through a door" for no reason, completely broke through it. No one was chasing him or threatening him. His mom was "scared he would flip out or something" and took him to the mental health clinic in Newport. Eric thought that he was then "sent off for a month." He did not know further details. He thought John was about 15 at the time.

John did not get along with Eric's dad. They would get into a physical fistfight a couple of times a year. Eric's dad was only there "off and on." The other kids didn't like having a stepfather. Other times they got along okay, would just "fall out" once in awhile. He denied the notion of any abuse taking place in the home.

Eric said that John was "abused a lot when he was in jail at 17." He remembers going to visit John and John had knots on his head, stating the police had done it. Eric describes this as "cartoon knots, like skin peeling back and the knot coming through." He also stated that John told him that the people in the "mental thing" whipped him "all the time with a paddle or a belt."

Eric stated that their brother, Lynn, is "real slow, but he makes do." He said he has a culinary license. He stated that Lynn is "crazy," defined as "has views on life that are different." When asked about that, he stated that Lynn thinks "like 50 years ago" and doesn't want to have much to do with people. He gets along with his family but he doesn't want to get to know others or interact with them. "He doesn't associate with anyone."

According to Eric, none of the brothers finished high school, except the youngest, Patrick, who just graduated. He is not sure why. He stated that school was very hard for him (Eric). He reportedly asked for help, asked to be tested for special education in high school, but the school refused, thinking he "just wanted to get out of work." He stated that his mother "wouldn't push the issue" and "was nonconfrontational." Eric wanted to get training to become an electronic systems technician but the math was too much for him. He is taking masonry courses, hoping they will not involve as much math. He thinks he has a learning problem himself.

Eric has concerns about the way John's trial was handled. He stated that Detective Paul Horn picked Eric up for questioning and had a tape that he played for Eric. On the tape, Eric could hear John's voice, which "sounded like he was just laying back talking to someone." There was another person's voice on the tape, but every time that person

started to speak. the detective fast-forwarded the tape. Eric knows who the other man was, someone they call "Drew Down." who was in jail at the same time as John. Eric's theory is that the police put the two men together and taped their conversation, hoping to "entrap" John. Eric claims that "Drew Down" had been in jail for six years for a murder but then was suddenly set free. He stated that he knows where to find this man and thought he would cooperate if you want to speak with him.

Eric also claims that the "little white kids" who were killed had also been wanted by the police for a drive-by. He stated that they pulled a gun on his sister-in-law, Angie Allen, stating that they would do the same to John.

He made a statement that Detective Ed Smith brought him a subpoena on pink notebook paper, which he thought was very strange. The prosecution wanted him to testify against John because he had driven John to the bus station. Eric stated that that was nothing unusual, John was always coming and going. Eric then went to Albuquerque until after the trial so he would not have to testify against his brother. He stated that the defense never contacted him at all, although he made one call to one of the attorneys (can't remember whom) and never received a call back. He remembered that his mother was considering moving to Houston at the time but stated that she would have testified if she'd been asked.

Eric is open to further discussion and will do whatever he can to help. He is willing to sign an affidavit if needed.

Jane McHan, LCSW
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Telephone Interview with Angelina Watson
October 27, 2003
1-1:30 PM

First contact was made with Ms. Watson on Oct. 22, 2003. She returned a call to me on that date but did not have time for an extended discussion. She was at work and does not have a home phone. She did tell me that she was in contact with most of John Balentine's family and would obtain correct contact info for me, as all of the phone numbers I had were wrong or disconnected. She also stated that no attorney, investigator or other person working on John's case had contacted her in the past. We agreed that I would call her at 1 PM on Oct. 27, 2003.

Following is a summary of that interview:

Name: Angelina Carol Watson
DOB: 6-1-74
Address: 900 Manning St.
Newport, AR 72112
Phone: Work only -- (870) 512-2209 or 2205
Employment: Administrative Assistant, Correctional Medical Services, Grimes Unit, AR
State Prison, Newport
Relationship: Has a son with John Balentine

Angelina Carol Watson was born on 6-1-74 in Oklahoma City, OK. Her mother is Linda Watson, who lives in Newport, AR. Her father is unknown. She preferred not to give further information about her family of origin, siblings' names, etc., as she does not feel that they are relevant to this case.

Angelina moved with her mother to Newport, AR as a baby and has lived there for most of her life. She did live in Little Rock, AR from 1991-97 and then returned to Newport.

She attended school in Newport, did not graduate, but later got a GED in 1991.

Angelina knew several of John Balentine's female cousins and other family members while she was growing up. She first met John in 1989, when she was 14 years old. Later in 1989, they developed a serious relationship and she became pregnant. That same

Exhibit C

year, he was sent to jail and then on to prison for "burglary or robbery." They were together until he went to jail. Their son, John Lezell Balentine, Jr. was born on 1-28-90. Angelina stayed in touch with John while he was in jail and in prison. She took the baby to visit him in jail but did not take him to see John after he was transferred to prison. They wrote letters during John's prison term. She stated that John demonstrated "very minimum concern" about the child. She described John as "very immature back then" and that he "didn't really act like he wanted to help." She stated that she was well acquainted with his family members but they were really no help to her either. They did not have a bad relationship but didn't offer her any assistance. She feels that she had a good relationship with his family and continues to have a good relationship with all but his sister Joann, who is "difficult to get along with."

After John got out of prison, Angelina did not have a close relationship with him. He did visit John, Jr. on a few occasions, but not consistently. After she moved to Little Rock, she would return to Newport periodically and would occasionally run into him.

John never paid child support and he never wrote or called his son on a regular basis till about 1998 or 1999. He does now write letters to both Angelina and their son. She is concerned about how he is coping. At times, he seems to be feeling all right, but at other times, he is "down" about his situation. She stated that she does what she can to stay in touch. She believes in Jesus and that everyone deserves a second chance. If we see John, she would like us to tell him to "be encouraged." When asked of any learning problems, emotional problems or other difficulties that John has had in his life, she stated that she did not know of any.

Angelina describes John as "a very intelligent person," but feels that he was "exposed to the wrong environment for so long." When asked about that, she stated that he has been in jail or prison and "that is a bad environment, you never know how they are traumatized there." She stated that he would have physical fights with people when he was younger, but she felt that it was almost expected of him. He had a reputation and people expected him to fight, so he got into fights. She also thought that his father's death in a car accident affected John. She stated that it was rumored that his father either committed suicide or was driving drunk. She stated that she never knew John to be around "positive people" very much. He tended to hang out with people who got him into trouble. His brothers Freddie and Eric have been in trouble quite a bit. She stated that his sister Joann "doesn't get along with anyone."

Angelina described John's mother, Clara Smith, as "very sweet" and that she "used to be a hard working woman." His youngest brother Patrick she also described as "very sweet."

John has two daughters with two other women in Newport. Angelina tries to stay in touch with them and has in the past tried to take both of the girls with her and her son to visit John in prison, but this has not worked out. She did have a picture taken of John, Jr. and his oldest half sister to send to John last year. She did not have specific contact info for the other women. One is named Lisa Childers; her daughter's name is Quinoyah

(spelling unknown), about age 8. The other is Vivian Robinson; her daughter's name is Karissa, age 16. Angelina stated that neither of them would have anything good to say about John.

John Jr. is now in 8th grade and doing well. Angelina also has two daughters, Linda Watson, age 12, and Kahdijah Smith, age 9.

Angelina had not had time to track down info on all of the other contacts, but did give me Clara Smith's phone number: (870) 217-0587.

I read my notes back to Angelina and she agreed that they were correct and accurate. She is willing to sign an affidavit if needed. She is willing to state that she was never contacted by anyone else regarding John's case.

Jane McHan, LCSW
Social Worker/Mitigation Specialist

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Telephone Interview with Lynn Rowe
October 27, 2003
8:10 to 8:25 PM

Name: Lynn Rowe
DOB: 3-15-64
Address: 323 Border St.
Newport, AR 72112
Phone: (870) 523-5419
Employment: Curtner Lumber Company, machine operator
Relationship: John Balentine's half brother

Mr. Rowe stated that John was "okay as a kid, didn't do much unless someone messed with him." "He didn't bother nobody unless they messed with him first." John could fix anything. He was a "good person." He "could do anything, he is a smart person." He loved kids, "was crazy about kids." He didn't mess with drugs.

"But if he wanted something, he would take it. Just being a kid."

John has a "hot temper" like his daddy. His daddy would "whup your butt if you did something wrong." He was killed in a car wreck. His mom was in the hospital for a year and a half after the wreck. Another man was in the car and broke his neck.

John and his stepfather, George Smith, did not get along. No one liked George Smith too much. He thought he ran everything. He and John "got into it" a couple of times. George Smith was "slick" and took advantage of people. None of the kids liked him when he was with their mother. They got divorced in 1992.

Mr. Rowe went to a Vo-Tech school in Hot Springs, AR. He did fine in school till he got to high school and then had trouble with his grades so was sent to the school in Hot Springs. He just didn't want to do the work. He regrets it now and wishes he could go back and do better. He also went to the Job Corps in Little Rock. He has worked hard all his life. He worked at several restaurants, Kentucky Fried Chicken for 6 years and a steakhouse for 4-5 years. He has been at the lumber business for 7 years.

Exhibit **D**

Mr. Rowe lives with his girlfriend, Euneice Jarrett in Newport. Mr. Rowe has one daughter, Laticia Lynn Reed. who lives in Louisiana.

Mr. Rowe does not know of John having any specific medical, educational, psychological or emotional problems. He stated that he was already out of the house by the time John was having troubles.

Mr. Rowe has never been contacted by an attorney, an investigator, or anyone else regarding John Balentine's case. He stated, "this is the first time anyone has ever called me." He is willing to sign an affidavit to this effect if needed. He has tried to write to John in the past, but his letters were returned because he was not approved to communicate with him. He is willing to help in any way he can.

Jane McHan, LCSW
Social Worker/Mitigation Specialist